IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Shri Ganga Jubli Pinjraprol Gaushala, Bikaner v. State of Rajasthan & another

S.B.CIVIL WRIT PETITION NO.2638/2007
under Articles 226 and 227 of the Constitution of India.

Date of Order :: 23rd October, 2007

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.L.Purohit, for the petitioner.
Mr. K.L.Thakur, Additional Advocate General.

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BY THE COURT :

The District of Nagaur is situated in Thar Desert and is mainly having rural population scattered in hamlets with average density of 127 persons per square kilometer. The entire district is having no perennial river and water supply mainly dependent on ground water, that is also saline and unpotable. In few pockets potable water at the depth of about 120 meters (about 450 feet) is available but that too is deteriorating due to intrusion of saline water from the adjoining saline zones and, therefore, fluoride contents continuously increasing. Entire district of

Nagaur is declared as dark zone due to continues fall of underground water. The district is having about 9000 tube wells, that is highest in a single district in entire sate and due to excessive use of underground water, its table is lowering down with high speed. Looking to all these conditions, Division Bench of this Court acting upon a letter (DBCivil Writ Petition (PIL) No.628/2004, Govind Ram v. State of Rajasthan & Ors.) restricted installation of tube wells.

To meet scarcity of potable water the Government of Rajasthan examined viability to avail water from nearest surface water sources those are (1) Indira Gandhi Canal and (2)Bisalpur Dam in District Tonk. Considering availability of 1200 qusek of water reserved for drinking purpose with Indira Gandhi Canal a project was drawn to provide water supply covering 1384 villages and 12 towns of District Nagaur and part of Bikaner District covering 111 villages and 12 towns from Indira Gandhi Canal. To execute the project a need of about 16000 bighas of land was observed and for purpose thats acquisition a lump sum provision of Rs.400 lacs was taken.

With the public purpose aforesaid a notification dated 13.11.2006 under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act of 1894”) was issued on behalf of State Government intending acquisition of land including

215.70 hectares of land owned by the petitioner society i.e. running Gaushala and also using land to provide water and “Saivan Ghaas” to cattle.

A notification dated 5.4.2007 under Section 17(4) read with Section 6 of the Act of 1894 was issued by the State Government and validity of that is assailed in this petition for writ with a contention that there was no reason available to the appropriate government to ignore usual procedure for land acquisition and to adopt extra ordinary procedure prescribed under Section 17(4) of the Act of 1894.

This Court by an order dated 21.5.2007 directed the respondent State to make available record of the proceedings taken for the purpose of dispensing with the inquiry by invoking provisions of Section 17 of the Act of 1894, accordingly, the same was shown to the Court and learned counsel for the petitioner was also allowed to peruse the record. From perusal of the record it emerges out that the land acquisition was necessary to execute water supply project, however, the Principle Secretary to the Government of Rajasthan while taking a decision for adopting procedure prescribed under Section 17 of the Act of 1894 and dispensing with the inquiry as per provisions of Section 5-A of the Act of 1894 did not record reasons elaborately. The note sheet drawn on 13.3.2007 reads as follows:-

> "13.3.07. File was called for. Last week MLA's from Nagaur distt met the Minister PHED and requested him to get Nagaur Project sanctioned so that villagers of Nagaur distt could be rid of brakish water. Minister directed to expedite and & reduce the time of execution to 30.9.08. Matter of land acquisition was also distt collector Bikaner. After discussion it was felt necessary to do dispense with the procedure of Sec 5A of Land Acqu. Act and to get this project executed at a fast speed, issue notices u/s 6 & 17(4) of L.A. Act, so that phase I could be started at the earliest. Take n/a accordingly for acquiring land at village Sharahborla of Bka distt for AW etc."

Learned counsel for the petitioner while relying upon various judgments of Hon'ble Supreme Court asserted that provisions of Section 17 of the Act of 1894 cannot be invoked just to ignore proceedings as per Section 5-A of the Act of 1894 and a decision to invoke these provisions is always required to be taken in the cases of extreme urgency and by recording reasons.

I am having no disagreement with the contention raised by counsel for the petitioner as the object of the provisions of Section 17 of the Act of 1894 is that when there is urgency for execution of a public purpose, this may be done expeditiously by

taking possession of the land without having to wait for making of award. The application of Section 17(4) of the Act of 1894 deprives a land holder from the opportunity of filing objections to the acquisition of their land as enshrined under Section 5-A. The effect of such a direction is having serious consequence upon the person interested in the land, the powers, therefore, are always required to be exercised cautiously and in the cases of genuine urgency.

It is true that a decision on the question of invoking urgency is only that of the government and ordinarily it is not justiciable, however, the decision must be taken on proper material and in a objective manner and such course should not be adopted mechanically. By invoking urgency powers the normal process for land acquisition stands dispensed with, therefore, a land owner looses his valuable right to submit objections. A valuable right given to the land owners to object against acquisition under Section 5-A of the Act can be taken away only in genuine case of urgency, thus, the power to issue direction under Section 17(4) of the Act of 1894 is always required to be exercised when it is felt that nature of urgency is such that it is not practicable to invite and consider objections under Section 5-A of the Act. If it is established that the appropriate government adopted the course of urgency provisions though there was no real urgency, in that event this Court while

exercising powers under Article 226 of the Constitution of India can very well interfere with such a decision of the government being taken under colourable exercise of powers.

In view of the discussion made above, the main issue required to be examined in present writ petition is as to whether the appropriate government was right in present set of facts in adopting the extraordinary course for acquiring the land as prescribed under Section 17(4) of the Act of 1894.

In the instant matter from perusal of the order sheet dated 13.3.2007, reference of that is already given in preceding paras, it reveals that MLAs representing various constituencies in District of Nagaur met with the Minister of Public Health Engineer Department and requested to get people of District rid from brakish water. The Minister after considering cause of people directed to expedite and reduce the time of execution of project relating to supply of potable water, accordingly, a decision was taken to dispense with the inquiry as per Section 5-A and to resort for the provisions of Section 17(4) read with Section 6 of the Act of 1894. It is true that the Government has not recorded the reasons for urgency elaborately or in detail but merely on that count it cannot be said that no urgency was existing to resort for the proceedings under Section 17 of the Act of

1894. It is not in dispute that entire District of Nagaur is not having any source of surface water and whatever underground water available is contaminated with excessive fluoride content. A Division Bench of this Court also in the case of Govind Ram (supra) looking to the fact that District of Nagaur has been declared dark zone, restricted and controlled abstraction of underground water. The Government of Rajasthan looking to acute scarcity of potable water in District of Nagaur planned an important project and to execute that the land is to be acquired. Expeditious need of execution of the project is also apparent as water is a basic need and entire population of Nagaur District is consuming water with higher level of fluoride content and MLAs representing various assembly segments of Nagaur District met with the Minister of Public Health Engineering Department with a request to expedite implementation of project to get rid from contaminated water. All the circumstances referred above establishes it well that an urgency was existing to implement an important water supply project. The project i.e. required to be undertaken shall effect a huge number of people and regard for the public welfare is highest law and, therefore, I do not find any error on part of the respondents in resorting proceedings under Section 17 (4) of the Act of 1894 in present matter. It is also pertinent to note that during the course of arguments learned Additional Advocate General apprised the Court

that the State Government shall make all necessary efforts to ensure availability of adequate “Saivan Ghaas” and water to the petitioner society to maintain its Gaushalas.

For the reasons mentioned above and looking to the larger public interest, I do not consider it appropriate to interfere in the matter while exercising powers under Article 226 of the Constitution and, thus, the petition for writ is dismissed.

( GOVIND MATHUR ),J.

Kkm/ps.